

Appl. No.: 10/812,451
Amdt. Dated August 29, 2007
Reply to Office Action of 08/09/2007

REMARKS/ARGUMENTS

Claims 1, 4-21, and 23-27 are pending.

Summary of Office Action Rejections

Claims 11, 22, and 24 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 1-2, 4-10, 14-17, 19-21, and 24 were again rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,018,904 to **Muraoka**. Claims 1, 10, 18, 20, and 21 were rejected as being anticipated by U.S. Patent No. 4,909,394 to **Stewart**.

Claims 1, 4-6, 10, 18, 19, 20, and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,138,862 to **Tai** in view of Stewart and U.S. Patent No. 1,366,839 to **Schnakenberg**.

Claims 2 and 19 were rejected as being unpatentable over **Tai, Stewart, and Schnakenberg**, and further in view of WO 03/068613 to **Rasanen**.

Claim 23 was rejected as unpatentable over **Tai, Stewart, Schnakenberg, and Rasanen**, and further in view of U.S. Patent No. 3,246,786 to Holly and U.S. Patent No. 3,374,922 to **Shelby**.

Claims 7-9, 12-17, 24, 25, and 27 were rejected as unpatentable over **Tai, Stewart, and Schnakenberg**, and further in view of **Muraoka**.

Claim 26 was rejected as unpatentable over **Tai, Stewart, Schnakenberg, and Muraoka**, and further in view of U.S. Patent No. 5,938,015 to **Candy**.

Claims 1-10, 14-17, and 19-25 were rejected as unpatentable over **Muraoka** in view of **Stewart**.

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Claims 11, 12, 18, and 27 were rejected as being unpatentable over **Muraoka** in view of **Stewart**, and further in view of U.S. Patent No. 3,227,273 to **Syverson** et al.

Response to Rejections Under 35 U.S.C. 112, Second Paragraph

Claims 11 and 24 were deemed to be indefinite because “such that” is alleged to be unclear. The Office Action cited MPEP § 2173.05(d) as support for this assertion. There appears to be some confusion between two different phrases. The cited MPEP section indeed indicates that “such *as*” is indefinite. Claims 11 and 24, however, do not include this phrase, but instead include the completely different phrase “such *that*”. There is nothing indefinite about “such that”, which is basically synonymous with “as a result of which”. Therefore, Applicant submits the rejections of Claim 11 and 24 under 35 U.S.C. 112, second paragraph, should be withdrawn.

Claim 22 has been canceled, thereby obviating the rejection of this claim.

Response to Rejections Under 35 U.S.C. 102(b) and 35 U.S.C. 103(a)

Claim 1 has been amended to include the limitations of Claim 2. Specifically, Claim 1 now recites, in relevant part:

“a cup holder having a different configuration from the primary container and comprising a tapered plastic cup having a radially outwardly projecting flange at a top end thereof, and an elongated skirt depending from the flange such that a channel is defined between the skirt and the side wall of the cup holder;

the cup holder being nested in the primary container when the package is in a packaged configuration, the channel of the cup holder receiving the rim of the primary container when the package is in the *packaged* configuration, the cup holder being removable from the primary container such that the package can be converted into a serving

configuration in which the primary container is nested inside the cup holder with a side wall of the cup holder surrounding a side wall of the primary container so as to form a double-walled structure thermally isolating contents of the primary container from a user's hand gripped about said double-walled structure; and

complementary locking features on the cup holder and primary container for locking the primary container into the cup holder in the serving configuration of the package, the locking features comprising a radial projection formed on one of the cup holder and primary container and a recess formed on the other of the cup holder and primary container, the projection engaging the recess in the serving configuration."

None of the cited references, alone or in combination, suggests such a container.

Muraoka's container includes an inner cup **3** having a flange and skirt such that a channel is defined between the skirt and the side wall of the inner cup, and the channel receives the rim **12** of the outer cup **2**. Thus, in the configuration illustrated in Fig. 2 of **Muraoka**, the container is in what Claim 1 refers to as the "*packaged* configuration". However, Claim 1 requires the two cups to be reversible such that the primary container (**Muraoka's** outer cup **2**) is nested within the cup holder (**Muraoka's** inner cup **3**), and in this *serving* configuration there are the complementary locking recess and projection that lock the primary container into the cup holder.

In contrast, **Muraoka's** container includes projections **11** that engage a recess between the ribs **16, 17** in the *packaged* configuration only. If **Muraoka's** containers were reversed and placed in a *serving* configuration as claimed, it would be impossible for the radially inwardly projecting projections **11** to engage anything on the cup **3**, which would then be radially *outward* of the cup **2** and its projections **11**. Furthermore, the ribs **16, 17** projecting radially outwardly from the cup **3** could not engage anything on the cup **2**, which would then be radially *inward* of the cup **3** and its ribs **16, 17**. It is also important to recognize that there is absolutely nothing in **Muraoka's** disclosure indicating that if the cups were reversed in orientation (outer within

inner), there would even be a snug fit between them—and there certainly is no disclosure of locking features for positively locking them together in the way claimed in Claim 1.

Thus, **Muraoka** does not anticipate or remotely suggest Claim 1 as amended.

As for **Stewart**, it merely discloses nesting a plurality of identical cups, and providing locking features for them. Claim 1, however, requires the cup holder and primary container to be *differently* configured. Furthermore, **Stewart** fails to disclose the elongated skirt, flange, and channel of the cup holder as required by Claim 1. **Stewart** also fails to disclose the channel receiving the rim of the primary container when the package is in the packaged configuration, as required by Claim 1. Thus, **Stewart** does not anticipate Claim 1.

Tai also discloses nesting a plurality of identical cups, which have no locking features of the configuration claimed. Furthermore, **Tai** fails to disclose the elongated skirt, flange, and channel required by Claim 1. **Tai** also fails to disclose the channel receiving the rim of the primary container when the package is in the packaged configuration, as required by Claim 1.

Schnakenberg's container similarly lacks various features of Claim 1, including at least the rim on the primary container, the flange and skirt on the cup holder, the complementary locking features, and the channel receiving the rim of the primary container when the package is in the packaged configuration, as required by Claim 1. Accordingly, **Schnakenberg** fails to anticipate or suggest Claim 1.

The remaining cited references are even less pertinent than those noted above.

Thus, the references cited in the Office Action, even if there were a suggestion or motivation to combine them (which Applicant does not admit to be the case), fall far short of rendering obvious the package recited in Claim 1. Accordingly, it is submitted that Claim 1 is patentable over the references.

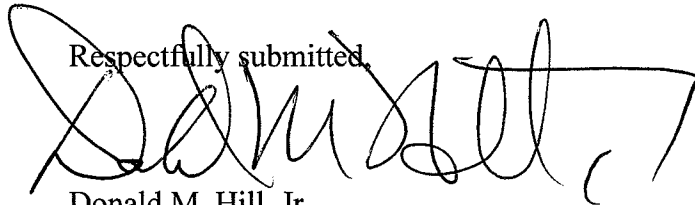
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Conclusion

Based on the above amendments and remarks, Applicant respectfully submits that all pending claims are patentable and the application is in condition for allowance.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald M. Hill, Jr.", written over the typed name.

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